IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 10, 2007 Session

FREE THE FATHERS, INC. v. STATE OF TENNESSEE, DEPARTMENT OF STATE, CHARITABLE SOLICITATIONS DIVISION

Appeal from the Chancery Court for Davidson County
No. 05-2073 III Ellen Hobbs Lyle, Chancellor

No. M2006-02329-COA-R3-CV - Filed February 7, 2008

This appeal arises from an enforcement action against a not-for-profit charitable corporation to compel the corporation's compliance with the registration provisions of the Solicitation of Charitable Funds Act, Tenn. Code Ann. § 48-101-501, *et. seq.* The corporation contended that it was a religious institution and thus exempt from the Act; however, it failed to submit an application for exempt status after numerous requests from the Charitable Solicitations Division of the Tennessee Department of State to do so. The Secretary of State issued an administrative decision enjoining the corporation from soliciting charitable funds and imposing a $40,000 civil penalty against the organization. The corporation filed a petition for judicial review in the Chancery Court of Davidson County challenging the constitutionality of the Act. The Chancellor found the constitutional challenges to be without merit and affirmed the decision of the Secretary of State. Finding no merit to the issues raised, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which E. RILEY ANDERSON, SP. J., joined. WILLIAM B. CAIN, P.J., M.S., not participating.

D. Marty Lasley, Chattanooga, Tennessee, for the appellant, Free the Fathers, Inc.

Robert E. Cooper, Jr., Attorney General and Reporter, and Joe Shirley, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

Free the Fathers, Inc., is a Tennessee not-for-profit corporation that was incorporated in 1984. The original name of the corporation was Let Freedom Ring. The corporate name was changed in 1987 to Free The Fathers, Inc. The corporation has maintained its principal offices in Chattanooga, Tennessee since its incorporation, and John M. Davies, the founder of the corporation, has served as its president and chief executive officer at all times.

The stated mission of the corporation has been to support freedom of religion and particularly freeing Roman Catholic Priests jailed in foreign lands. A principal component of the corporation's activities has comprised mailing literature to concerned Catholics to educate them concerning the plight of Catholic priests who are incarcerated by hostile nations and to raise funds in furtherance of the corporation's efforts. The corporation applied for federal recognition as an Internal Revenue Code § 501(c)(3) charitable organization, which the Internal Revenue Service approved in March of 1987.

At all times material to this action, the corporation has utilized its Chattanooga office to solicit contributions from residents of Tennessee and residents of other states and countries. The corporation's solicitation efforts have been most successful. Its annual receipts of charitable contributions have averaged in excess of $200,000 per year since 1991.

Although the corporation applied for and received federal recognition as a charitable entity, the corporation never registered as a charitable solicitation organization with the Charitable Solicitations Division of the Tennessee Department of State (hereinafter "Division" or "Department") as required by Tenn. Code Ann. § 48-101-504(a). Moreover, it never submitted an application for exemption as a religious institution. There is, however, a significant and lengthy history of communications by the State of Tennessee with the corporation and its founder and president, John M. Davies, encouraging the corporation to apply for registration or exempt status.

That history began in 1991 with a letter from the Director of the Charitable Solicitations Division ("Division") to the corporation. The letter was addressed to the attention of John M. Davies, notifying him of the requirements for registration with the Division. A copy of Tenn. Code Ann. § 48-101-501, *et seq*., the Solicitation of Charitable Funds Act ("Act"), was enclosed. Mr. Davies sent a letter to the Director of the Division responding on behalf of the corporation, stating in a conclusory fashion that the corporation was exempt as a religious institution. Although Mr. Davies claimed the corporation was a religious institution and therefore exempt, he did not submit an application for exemption, as the statute required; he merely enclosed a copy of the 501(c)(3) determination letter from the IRS.

In 1993, the Division Director again notified the corporation by letter that it was not registered as a charitable organization. The Director also advised the corporation that soliciting funds from the public without registration would constitute a violation of the Solicitation of Charitable Funds Act, Tenn. Code Ann. § 48-101-501, *et. seq*. As a courtesy, the Director enclosed a charitable solicitation pamphlet and a registration application form along with a request that the corporation comply with the Act. Neither Mr. Davies nor anyone else responded on behalf of the corporation.

When a new Director was appointed in the latter part of 1993, the Director sent another letter to the corporation, to the attention of Mr. Davies, requesting that the corporation complete and submit the registration packet previously provided. In his letter, the Director specifically noted that registration was a condition precedent to solicitation and that a violation of the Act subjects the corporation to civil penalties and possibly criminal prosecution.

Mr. Davies responded to the new Director's letter stating that the corporation was exempt from registration due to its religious status. Again, Mr. Davies did not submit an application for exemption, as requested by the Division; he merely enclosed a copy of his 1991 letter and commented that his 1991 letter should answer the Division's questions.

Due to a myriad of circumstances, the corporation and the Department continued to dance around the issue for the next three years. One reason for the protracted waltz was a challenge to the constitutionality of the exemption provision of the Act in an unrelated proceeding. *See State v. Smoky Mountain Secrets, Inc*., 937 S.W.2d 905 (Tenn. 1996). Because the exemption was under scrutiny in *State v. Smoky Mountain Secrets*, the Division sent written notice to the corporation in December 1993, stating that no determinations of exemption would be made until the constitutionality of the Act had been resolved. Thereafter, in January and May of 1996, following the Supreme Court's determination that the Act was constitutional, the Division sent letters to the corporation requesting documentation to support the corporation's conclusory claims that it was exempt as a religious institution. Neither Mr. Davies nor anyone else on behalf of the corporation responded to either letter.

In October of 1997, the Director again sent a letter to the attention of Mr. Davies encouraging the corporation to either register as a charitable organization or provide supporting documentation that the corporation qualified for an exemption from the registration requirement. Again, the Director advised that solicitation without registration could lead to civil penalties, requested an explanation for not being registered, and requested that Mr. Davies complete and return the enclosed form by the following week. As had occurred on previous occasions, neither Mr. Davies nor anyone else on behalf of the corporation responded to the Director's letter.

On December 17, 1997, the Division sent a certified letter to the corporation stating that the corporation was in violation of the Act. The Director of the Division enclosed in the letter a form that was marked "FINAL NOTICE." The receipt from the certified mail showed that it was received by Mr. Davies on December 22, 1997. Mr. Davies responded on behalf of the corporation on January 21, 1998, by repeating his contention that the corporation was exempt from registration as a religious institution. As before, however, he failed to provide an application for exemption to demonstrate the corporation qualified for the exemption. Although it had been provided to him previously, Mr. Davies also requested a copy of the exemption request form and a copy of applicable state law. The Division promptly honored his request by mailing the requested information and documentation to him on February 2, 1998. The Division never received a reply to its February 2, 1998 letter.

Thereafter, on April 17, 1998, the Division dispatched two investigators to Chattanooga to conduct an inspection of the corporation. Upon completing their investigation, the investigators notified the corporation that it was soliciting and receiving financial contributions in violation of the registration requirement and issued a Notice of Violations, a Notice of Rights, and another exemption form package to complete and return to the Division. The corporation did not respond to the Notice of Violations and did not submit the exemption forms.

After the Division Director and Mr. Davies had a telephone conversation, the Director sent a letter in January of 1999, stating "This will confirm our telephone conversation today in which you telephoned to confirm that 'Free the Fathers' will submit an application with our office to register the organization's charitable fund raising activities." Enclosed with the letter was another registration package with instructions that, "[t]he completed package must be returned to our office by January 29, 1999." The letter was sent by certified mail, and a return receipt showed that the corporation received the package on January 21, 1999. The corporation again failed to register and failed to submit an application to be exempt from registration.

The Charitable Solicitations Division of the Tennessee Department of State commenced enforcement proceedings against the corporation by filing a Notice of Imposition of Civil Penalties on May 19, 2000 and amended the Notice on March 19, 2004. The corporation was assessed the penalty in the amount of $40,000, which was attributable to violations occurring over an eight-year period from 1996 to 2003. The corporation challenged the imposition of penalties. Following a hearing before an Administrative Judge in July 2004, the Administrative Judge issued an Order in September 2004, assessing a $40,000 civil penalty against the corporation and enjoining it from all charitable solicitation. The corporation appealed that decision to the Secretary of State. On June 16, 2005, the Secretary of State issued a Final Order affirming the decision of the Administrative Judge.

The corporation then filed this action, a Petition for Judicial Review in the Chancery Court for Davidson County, in which it averred the Final Administrative Order of the Secretary of State violated the corporation's state and federal constitutional rights of due process, prior restraint of free speech, freedom of association, free exercise of religion, and the commerce clause. The Chancellor affirmed the administrative decision and concluded that the corporation failed to meet its burden under the Administrative Procedures Act.

The corporation now appeals to this court contending the Chancellor erred in interpreting the Act as to its application to the corporation. Furthermore, the corporation contends the Act violates the First and Fourteenth Amendments to the United States Constitution, the Commerce Clause of the United States Constitution, and Article 1, Section 3 of the Tennessee Constitution.

APPELLATE REVIEW UNDER THE ADMINISTRATIVE PROCEDURES ACT

Judicial review of decisions of administrative agencies, when those agencies are acting within their area of specialized knowledge, experience, and expertise, is governed by the narrow standard contained in Tenn. Code Ann. § 4-5-322(h) rather than the broad standard of review used in other civil appeals. *Willamette Indus., Inc. v. Tennessee Assessment Appeals Comm'n,* 11 S.W.3d 142, 147 (Tenn. Ct. App. 1999); *Wayne County v. Tennessee Solid Waste Disposal Control Bd*., 756 S.W.2d 274, 279-80 (Tenn. Ct. App. 1988); *CF Indus. v. Tennessee Pub. Serv. Comm'n*, 599 S.W.2d 536, 540 (Tenn. 1980); *Metropolitan Gov't of Nashville v. Shacklett*, 554 S.W.2d 601, 604 (Tenn. 1977).

The trial court may reverse or modify the decision of the agency if the petitioner's rights have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(1) In violation of constitutional or statutory provisions;
(2) In excess of the statutory authority of the agency;
(3) Made upon unlawful procedure;
(4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
(5) Unsupported by evidence which is both substantial and material in the light of the entire record.

Tenn. Code Ann. § 4-5-322(h)(1)-(5). However, the trial court may not substitute its judgment concerning the weight of the evidence for that of the Board. *Jones v. Bureau of TennCare*, 94 S.W.3d 495, 501 (Tenn. Ct. App. 2002) (citing *Gluck v. Civil Serv. Comm'n*, 15 S.W.3d 486, 490 (Tenn. Ct. App. 1999)). The same limitations apply to the appellate court. *See Humana of Tennessee v. Tennessee Health Facilities Comm'n*, 551 S.W.2d 664, 668 (Tenn. 1977) (holding the trial court, and this court, must review these matters pursuant to the narrower statutory criteria). Thus, when reviewing a trial court's review of an administrative agency's decision, this court is to determine "whether or not the trial court properly applied the . . . standard of review" found at Tenn. Code Ann. § 4-5-322(h). *Jones*, 94 S.W.3d at 501 (quoting *Papachristou v. Univ. of Tennessee,* 29 S.W.3d 487, 490 (Tenn. Ct. App. 2000)).

ANALYSIS

A.

For its first issue, the corporation contends the Chancery Court erroneously interpreted the exemption section of the Act, Tenn. Code Ann. § 48-101-502(d), and then erroneously found that the corporation was not exempt from the registration and reporting requirement of the Act. Stated another way, the corporation contends the Chancellor misinterpreted and misapplied the Act. We find no merit to either contention.

Due to abuses by some organizations that identified themselves as charitable organizations, the Tennessee General Assembly enacted the Solicitation of Charitable Funds Act, Tenn. Code Ann. § 48-101-501, *et seq*. *See* 1976 Tenn. Public Acts, ch. 735. The caption of the statute explains that it was enacted "to regulate solicitation of funds for charitable organizations, to authorize the Secretary of State to regulate professional solicitors and charitable organizations: [to determine] exempt organizations, [establish] registration procedures, [and prohibit] acts and penalties. . . ." *See State v. Smoky Mountain Secrets, Inc.*, 937 S.W.2d 905, 908 (Tenn. 1996). Relevant to this appeal, the Act requires the following:

> Every charitable organization which intends to solicit contributions from or within this state, or have funds solicited on its behalf, shall, prior to any solicitation, file a registration statement with the secretary of state, upon forms prescribed by the secretary of state.

Tenn. Code Ann. § 48-101-504(a)(2002). In the registration statement, charitable organizations are required to provide, among other things, the name of the organization and the purpose for which it

was organized, names of the officers and trustees, and the purpose for which the contributions to be solicited shall be used. Tenn. Code Ann. § 48-101-504(a).

The Act, however, also provides exemptions from registration. *See* Tenn. Code Ann. § 48-101-502. To qualify for one of the exemptions, the Act requires the organization to submit a statement on a prescribed form to the Secretary of State explaining the reason for the exemption. *See* Tenn. Code Ann. § 48-101-502(d).

> Any charitable organization that claims to be exempt from the registration provisions . . . and which intends to or does solicit charitable contributions shall submit, to the secretary of state, a statement of the name, address and purpose of the organization and a statement setting forth the reason for the claim for exemption. This statement shall be on a form prescribed by the secretary of state and shall be sworn to or affirmed by the principal officer of the charitable organization. . . .

Tenn. Code Ann. § 48-101-502(d)(2002).

The Act also affords two exemptions that are at issue in this case. One pertains to small charitable organizations, ones which "[do] not intend to solicit and receive and does not actually raise or receive gross contributions . . . from the public in excess of thirty thousand dollars ($30,000) during a fiscal year . . . ." Tenn. Code Ann. § 48-101-502(a)(2). The other makes bona fide religious institutions exempt from the Act. *See* Tenn. Code Ann. § 48-101-502(a)(1). Subsection (c) of § 48-101-502 defines bona fide religious institutions for the purpose of this section to include:

> (1) Ecclesiastical or denominational organizations, churches or established physical places for worship in this state, at which nonprofit religious services and activities are regularly conducted and carried on, and also includes those bona fide religious groups which do not maintain specific places of worship and which are not subject to federal income tax and are not required to file an IRS Form 990 under any circumstance; and
>
> (2) Such separate groups or corporations which form an integral part of those institutions which are exempt from federal income tax as exempt organizations under the provisions of § 501(c)(3), of the Internal Revenue Code of 1954, or of a corresponding section of any subsequently enacted federal revenue act, and which are not required to file an IRS Form 990 under any circumstance, and which are not primarily supported by funds solicited outside their own membership or congregation; and
>
> (3) Such institutions soliciting contributions for the construction and maintenance of a house of worship or residence of a clergy member.

Tenn. Code Ann. § 48-101-502(c)(1) - (3).

The corporation contends the Chancellor misinterpreted the Act by failing to recognize that it was exempt and then misapplied the Act by applying it to the corporation. What the corporation fails to acknowledge, however, is that it failed to fulfill a condition precedent to being eligible for either exemption. That condition precedent is the submission of a statement and the requisite information required by the Act to qualify for the exemption. As Tenn. Code Ann. § 48-101-502(d) expressly and clearly provides, any charitable organization that claims to be exempt and that intends to or does solicit charitable contributions "shall submit, to the secretary of state, a statement of the name, address and purpose of the organization and a statement setting forth the reason for the claim for exemption. This statement shall be on a form prescribed by the secretary of state and shall be sworn to or affirmed by the principal officer of the charitable organization." Tenn. Code Ann. § 48-101-502(d).

The corporation argues that it requested the exemption in a 1991 letter written by John Davies to the Department, in which he stated, "Free the Fathers would be exempt from registration under [the statute]." Enclosed with the letter was a copy of the corporation's 501(c)(3) exemption designation. The simple fact, however, is that the corporation never submitted "the form prescribed by the secretary of state," and it never provided the statutorily mandated information. As the Chancellor explained the situation in her Memorandum and Order:

> Petitioner's failure to comply with the statutory requirement is not a result of any lack of opportunity, however; over a period of eight years, the Secretary of State mailed and even hand-delivered registration forms, exemption forms, and copies of the Act to the Petitioner, and the Secretary repeatedly encouraged Petitioner to comply with either the registration or the exemption provision of the Act. Although Petitioner maintained all along that it was exempt from the Act, it never registered or submitted an exemption form. Accordingly, Petitioner's argument that the Secretary of State wrongly determined that Petition was not exempt from the Act must fail.
> . . .
>
> It is sufficient to find that the Petitioner never took the prescribed steps to seek an exemption under the Act, and consequently, the Division never misapplied or misinterpreted the Act with regard to Petitioner.

For the reasons stated above, we find the corporation's contention that the Chancellor misinterpreted and misapplied the Act is without merit.

B.

The corporation asserts several constitutional challenges to the Act and its application to the corporation. It contends the Act violates the First and Fourteenth Amendments and the Commerce Clause of the United States Constitution. It also contends the Act violates Article I, Section 3 of the Tennessee Constitution. We will discuss each in turn.

UNITED STATES CONSTITUTIONAL CHALLENGES

THE FIRST AMENDMENT

The corporation presents three First Amendment challenges. First, it contends the Act's registration scheme constitutes an impermissible prior restraint on speech. Second, it contends the Act vests overly broad discretion in the Secretary of State. Third, it contends the Secretary of State exceeded its statutory authority setting up and executing the exemption request process.

Prior Restraint

An impermissible "prior restraint" exists when the exercise of First Amendment rights depends upon prior approval of public officials. *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville and Davidson County*, 274 F.3d 377, 400 (6th Cir. 2001), cert. denied 535 U.S. 1073, 122 S.Ct. 1952, 152 L.Ed.2d 855 (2002). A system creating prior restraints bears a heavy presumption against its constitutional validity. *Id.* (citing *Freedman v. Maryland*, 380 U.S. 51, 57, 85 S.Ct. 734 (1965)).

The corporation relies on a long line of cases in which the Supreme Court of the United States has struck down charitable solicitations *licensing* statutes as being unconstitutional. *See Riley v. Nat'l Fed'n of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988). This well-accepted line of cases is summarized as follows:

> As a general rule, any law subjecting the exercise of First Amendment freedoms to the prior restraint of a license infringes such freedoms. In the area of free expression, a licensing statute placing unbridled discretion in the hands of a government official or agency constitutes a prior restraint and may result in censorship.

16A AM. JUR. 2D *Constitutional Law* § 527 (2007).

The fallacy with the corporation's reliance on the above line of cases is that the Act is not administered as a *licensing or permitting* scheme. Rather, the Act is administered as a *registration* requirement. The difference is significant because a registration requirement does not create a restraint on speech in the form of licensing, it merely requires registration. As the Chancellor noted:

> The Tennessee statute is administered as a registration requirement and not a requirement for the granting or denial of a license or permit. Correspondingly, exemptions under the Act are not "issued" in the manner that a permit or a license is issued. As such, the requirements of registration and the existence of the exemption provision do not implicate any prior restraints on speech capable of violating the First Amendment.

A statute "'may constitutionally require fundraisers to disclose certain financial information' or fulfill mandated registration requirements." *Dayton Area Visually Impaired Persons, Inc. v. Fisher*, 70 F.3d 1474, 1481 (6th Cir. 1995) (citing *Riley*, 487 U.S. at 795, 108 S.Ct. at 2676-77; *Secretary of State of Maryland v. Joseph H. Munson Co., Inc.,* 467 U.S. 947, 967 n.16, 104 S.Ct.

2839, 2852 n. 16 (1984); *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 637-38, 100 S.Ct. 826, 836-837 (1980)). As the United States Supreme Court explained:

> Our decisions have repeatedly recognized the legitimacy of government efforts to enable donors to make informed choices about their charitable contributions. In *Schaumburg*, the Court thought it proper to require "disclosure of the finances of charitable organizations," thereby to prevent fraud "by informing the public of the ways in which their contributions will be employed." 444 U.S., at 638, 100 S.Ct. 826. In *Munson*, the Court reiterated that "disclosure of the finances of a charitable organization" could be required "so that a member of the public could make an informed decision about whether to contribute." 467 U.S., at 961-962, n. 9, 104 S.Ct. 2839. And in *Riley*, the Court said the State may require professional fundraisers to file "detailed financial disclosure forms" and may communicate that information to the public. 487 U.S., at 800, 108 S.Ct. 2667; *see also id.*, at 799, n. 11, 108 S.Ct. 2667 (State may require fundraisers "to disclose unambiguously [their] professional status").
>
> In accord with our precedent, as Telemarketers and their *amici* acknowledge, in "[a]lmost all of [the] states and many localities," charities and professional fundraisers must "register and file regular reports on activities [,] particularly fundraising costs." Brief for Respondents 37; see Brief for Independent Sector et al. as Amici Curiae 6-8. These reports are generally available to the public; indeed, "[m]any states have placed the reports they receive from charities and professional fundraisers on the Internet."

Illinois, ex rel. Madigan v. Telemarketing Associates, Inc., 538 U.S. 600, 623 (2003).

The Act states, "Every charitable organization which intends to solicit contributions from or within this state, or have funds solicited on its behalf, shall, prior to any solicitation, file a registration statement with the secretary of state, upon forms prescribed by the secretary of state." Tenn. Code Ann. § 48-101-504(a). The Act, however, does not envision a grant or denial of a license or a permit, only registration. Accordingly, we hold that the Act does not impose a constitutionally impermissible prior restraint.

Discretion

The corporation contends the Act vests overly broad discretion in the Secretary of State. The corporation, however, has failed to cite any relevant authority to support this contention. Instead, it relies upon cases that pertain to a license requirement, not a registration requirement as is the case here. *See Forsyth County v. Nationalist Movement*, 505 U.S. 123, 131, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992); *Thomas v. Chicago Park Dist.* 534 U.S. 316, 323, 122 S.Ct. 775, 780 (2002).

As we stated above, a registration scheme does not require the same level of constitutional protections as a licensing scheme. *See Madigan*, 538 U.S. 600, 623 (2003); *see also Fisher* 70 F.3d at 1481. The Act constitutes a registration scheme, and it only requires that the organization file a

statement that provides the benign information required by the statute. *See* Tenn. Code Ann. § 48-101-504(a). Pursuant to Tennessee's registration requirement, the Secretary of State does not have the discretion to deny registration as an official might deny a license. Accordingly, we find no merit to this contention.

Statutory Authority

The corporation next contends that the Secretary of State "exceeded its statutory authority setting up and executing the exemption request process" and by assessing a civil penalty in excess of $5,000. Indeed, the Department admits that it erroneously included in its forms a statement that "Request for exemptions must be filed annually with this Division." As the Division of Charitable Solicitations explained, "[a]n exemption is a one-time deal. The only time you would ever have to come back into our office is if circumstances should change." But for the foregoing error, we find no other action by the Secretary of State that exceeds its statutory authority regarding the exemption process.[1]

The corporation argues the Secretary of State exceeded his authority with the imposition of civil penalties totaling $40,000. As Tenn. Code Ann. § 48-101-514(a)(1) provides, "the secretary of state . . . may impose a civil penalty of not more than five thousand dollars ($5,000) for each and any violation of this part or a rule thereunder." The Department assessed a $5,000 civil penalty based on the corporation's failure to register for each of eight years, 1996-2003, the aggregate of which is $40,000. We, therefore, find no merit to this issue.

THE FOURTEENTH AMENDMENT

The corporation contends the Act violates the Fourteenth Amendment to the United States Constitution; however, it failed to support this contention in its brief. The Tennessee Rules of Appellate Procedure require an appellant to support an argument it asserts by setting forth reasons why the contention requires appellate relief, "with citations to the authorities and appropriate references to the record." Tenn. R. App. P. 27(a)(7).

The corporation failed to set forth any reasoning or citations to support the conclusory assertion that the Act violates the Fourteenth Amendment. Accordingly, we find the corporation has waived this issue on appeal.[2]

---

[1]The corporation additionally claims that the Department does not have the authority to ask the following question, "Does more than 50% of your support come from the organization with which you are affiliated?" We find the question relevant to whether an organization is "an integral part" of a "Bona fide religious institution" as described in Tenn. Code Ann. § 48-101-502(c). Accordingly, we find no error with the Department asking the question.

[2]The corporation relied on *Freedman v. Maryland*, 380 U.S. 51 (1965), which requires procedural safeguards based on the First and Fourteenth Amendments; however, it did not make a specific argument based on the Fourteenth Amendment in the trial court or in this court. The trial court found the corporation had failed to make a substantive claim on this issue, and we do as well.

THE COMMERCE CLAUSE

The corporation contends the Act violates the Commerce Clause of the United States Constitution. The challenge pertains to the language found in Tenn. Code Ann. § 48-101-502(a)(2), which states, in pertinent part, that the registration requirement does not apply to the following:

> A charitable organization which does not intend to solicit and receive and does not actually raise or receive gross contributions . . . *from the public* in excess of thirty thousand dollars ($30,000) during a fiscal year. . . .

T. C. A. § 48-101-502(a)(2) (emphasis added). The corporation contends that if the language "*from the public*" were interpreted to mean from the "general public worldwide," the Act would violate the Commerce Clause because "such an interpretation would be an attempt to regulate the charitable solicitations of an organization outside the State of Tennessee or regulate a charitable organization based upon conduct wholly outside the State of Tennessee."[3] The Chancellor did not rule on the merits of the issue. Instead, the issue was resolved on the finding the corporation lacked standing to assert the claim.

A party challenging a statute on constitutional grounds must have standing to assert the challenge. *Nat'l. Gas Distrib. v. Sevier County Util. Dist.*, 7 S.W.3d 41, 43 (Tenn. Ct. App.1999). Standing is a judicial doctrine used to determine whether a party is entitled to judicial relief. *Metro. Air Research Testing Auth., Inc. v. Metro. Gov't of Nashville & Davidson County*, 842 S.W.2d 611, 615 (Tenn. Ct. App. 1992). It requires the court to decide whether the party has a sufficiently personal stake in the outcome of the controversy to warrant the exercise of the court's power on its behalf. *Browning-Ferris Indus., Inc. v. City of Oak Ridge*, 644 S.W.2d 400, 402 (Tenn. Ct. App. 1982).

In Tennessee, the standing requirement demands a showing that the statute infringes on the rights of the person attacking it. *Tenn. Dept. of Health v. Boyle*, No. M2001-01738-COA-R3-CV, 2002 WL 31840685, at *3-4 (Tenn. Ct. App. Dec. 19, 2002) (citing *Nat'l. Gas Distrib.*, 7 S.W.3d at 41). To establish standing, a plaintiff must show: (1) that it has sustained a distinct and palpable injury, (2) that the injury was caused by the challenged conduct, and (3) that the injury is one that can be addressed by a remedy that the court is empowered to give. *City of Chattanooga v. Davis*, 54

---

[3] The Commerce Clause provides that "[t]he Congress shall have Power . . . [t]o regulate Commerce . . . among the several States. . . ." Art. I, § 8, cl. 3. The U.S. Supreme Court has held that the Commerce Clause "directly limits the power of the States to discriminate against interstate commerce." *Wyoming v. Oklahoma*, 502 U.S. 437, 454, 112 S.Ct. 789, 800 (1992). The restraint is referred to as the "dormant" Commerce Clause. *Oklahoma Tax Com'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179, 115 S.Ct. 1331, 1335 (1995). To evaluate a state's regulatory measures under the dormant Commerce Clause, the first step is to determine whether it "regulates evenhandedly with only 'incidental' effects on interstate commerce, or discriminates against interstate commerce." *Hughes v. Oklahoma*, 441 U.S. 322, 336, 99 S.Ct. 1727, 1729, 60 L.Ed.2d 250 (1979). The term, "discrimination" means "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter. If a restriction on commerce is discriminatory, it is virtually per se invalid." *Oregon Waste Sys., Inc. v. Dept. of Envtl. Quality of State of Or.* 511 U.S. 93, 99, 114 S.Ct. 1345, 1350 (1994).

S.W.3d 248, 280 (Tenn. 2001); *In re Youngblood*, 895 S.W.2d 322, 326 (Tenn. 1995); *Metropolitan Air Research Testing Auth., Inc. v. Metropolitan Gov't*, 842 S.W.2d 611, 615 (Tenn. Ct. App.1992).

In applying the aforementioned standard, the Chancellor stated that, "even if one were to assume *arguendo* that the Act did discriminate against out-of-state charitable organizations in favor of in-state organizations in violation of the Commerce Clause, [the corporation] . . . is not an out-of-state entity that would face discrimination under the Act." The corporation failed to demonstrate that it was injured by a violation of the Commerce Clause. Additionally, it has failed to show how prevailing on the Commerce Clause claim would redress any injury it might have sustained. We therefore affirm the Chancellor's ruling that the corporation failed to establish that it has standing to bring this challenge.

THE TENNESSEE CONSTITUTIONAL CHALLENGE

The corporation asserts a very general claim that the Act violates Article I, Section 3 of the Tennessee Constitution by placing a great burden on a religious organization to provide private financial information to the state without any showing that it commits fraud when soliciting its members or poses enough of a likelihood to commit fraud to justify regulation. The corporation does not provide any further insight or reasoning to explain or support this contention.

Article I, Section 3 of the Tennessee Constitution declares:

> That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishment or mode of worship.

Tenn. Const. art. I, §3.

The United States Supreme Court has repeatedly recognized the legitimacy of registration and disclosure requirements that enable donors to make informed decisions about their charitable contributions and that protect the public from the possibility of fraudulent schemes. *Madigan*, 538 U.S. at 623. With regard to the solicitation of donations for religious purposes, the Supreme Court, in *Cantwell v. State of Connecticut*, 310 U.S. 296, 305, 60 S. Ct. 900, 904 (1940), has held:

> The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise.

Cantwell v. State of Connecticut, 310 U.S. 296, 305, 60 S. Ct. 900, 904 (1940). Moreover, the Tennessee Supreme Court has held that "[t]he enforcement of a facially neutral and uniformly applicable law that only incidentally burdens religious practice will be upheld if the government demonstrates that the law is a reasonable means for promoting a legitimate public interest." *State ex rel. Com'r of Transp. v. Med. Bird Black Bear White Eagle*, 63 S.W.3d 734, 763 (Tenn. Ct. App. 2001) (citing *Bowen v. Roy*, 476 U.S. 693, 707-08, 106 S.Ct. 2147, 2156 (1986)).

We have concluded, as the Chancellor did, that the Act is "facially neutral and uniformly applied to all charitable organizations. The Act has the secular purpose of providing solicitees and donees with information about charitable organizations soliciting donations from or within Tennessee and protecting them from the possibility of fraud and misrepresentation in the conduct of such solicitations." The Act "neither inhibits nor promotes religion or religious conduct, nor does it suppress, encourage, or discourage the religious content of solicitations. Indeed, the Act does not concern itself with the charitable organization's purpose or message – regardless of the religious or secular nature of the solicitation."

The Act treats all charitable organizations equally with respect to its registration and exemption provisions, and the nondiscriminatory burden placed on all charitable organizations is simply the obligation to complete the requisite form to claim an exemption from registration or, if not exempt, the forms for an annual registration. *See* Tenn. Code Ann. § 48-101-504(a). We therefore conclude, as the Chancellor did, that the Act does not violate Article I, Section 3 of the Tennessee Constitution.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Appellant, Free the Fathers, Inc.

_____

FRANK G. CLEMENT, JR., JUDGE